

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Introduced**

## **House Bill 4113**

BY DELEGATES ATKINSON, PACK, ANDERSON, COOPER,  
CRISS, COWLES, MAYNARD, HARDY, STEELE, ELLINGTON  
AND JENNINGS

[Introduced January 13, 2020; Referred to the  
Committee on Finance.]



1 A BILL to amend and reenact §11-14C-9 and §11-14C-30 of the Code of West Virginia, 1931, as  
2 amended, all relating to motor fuel excise taxes, providing exemption for fuel used in power  
3 take off unit of a fuel delivery truck; and allowing refunds of all motor fuel taxes if fuel lost  
4 through casualty.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 14C. MOTOR FUEL EXCISE TAX.**

**§11-14C-9. Exemptions from tax; claiming refunds of tax.**

1 (a) *Per se exemptions from flat rate component of tax.* — Sales of motor fuel to the  
2 following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax  
3 levied by section five of this article and the flat rate may not be paid at the rack:

4 (1) All motor fuel exported from this state to any other state or nation: *Provided*, That the  
5 supplier collects and remits to the destination state or nation the appropriate amount of tax due  
6 on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel  
7 which is transported and delivered outside this state in the motor fuel supply tank of a highway  
8 vehicle;

9 (2) Sales of aviation fuel;

10 (3) Sales of dyed special fuel; and

11 (4) Sales of propane unless sold for use in a motor vehicle.

12 (b) *Per se exemptions from variable component of tax.* — Sales of motor fuel to the  
13 following are exempt per se from the variable component of the tax levied by section five of this  
14 article and the variable component may not be paid at the rack:

15 All motor fuel exported from this state to any other state or nation: *Provided*, That the  
16 supplier collects and remits to the destination state or nation the appropriate amount of tax due  
17 on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel  
18 which is transported and delivered outside this state in the motor fuel supply tank of a highway  
19 vehicle.

20           (c) *Refundable exemptions from flat rate component of tax.* — A person having a right or  
21 claim to any of the following exemptions from the flat rate component of the tax levied by section  
22 five of this article shall first pay the tax levied by this article and then apply to the Tax  
23 Commissioner for a refund:

24           (1) The United States or agency thereof: *Provided*, That if the United States government,  
25 or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of  
26 this article on a purchase of motor fuel, the person selling tax previously paid motor fuel to the  
27 United States government, or its agencies or instrumentalities, may claim a refund of the flat rate  
28 component of tax imposed by section five of this article on those sales;

29           (2) A county government or unit or agency thereof;

30           (3) A municipal government or any agency thereof;

31           (4) A county board of education;

32           (5) An urban mass transportation authority created pursuant to the provisions of article  
33 twenty-seven, chapter eight of this code;

34           (6) A municipal, county, state or federal civil defense or emergency service program  
35 pursuant to a government contract for use in conjunction therewith or to a person who is required  
36 to maintain an inventory of motor fuel for the purpose of the program: *Provided*, That motor fueling  
37 facilities used for these purposes are not capable of fueling motor vehicles and the person in  
38 charge of the program has in his or her possession a letter of authority from the Tax Commissioner  
39 certifying his or her right to the exemption. In order for this exemption to apply, motor fuel sold  
40 under this subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used  
41 in vehicles or equipment owned and operated by the respective government entity or government  
42 agency or authority;

43           (7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently  
44 exported from this state to any other state or nation: *Provided*, That the exporter has paid the  
45 applicable motor fuel tax to the destination state or nation prior to claiming this refund or the  
46 exporter has reported to the destination state or nation that the motor fuel was sold in a transaction

not subject to tax in that state or nation. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;

(9) All gallons of fuel used for heating any public or private dwelling, building or other premises;

(10) All gallons of fuel used for boilers;

(11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial solvent;

(12) All gallons of motor fuel used as lubricants, ingredients or components of a manufactured product or compound;

(13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;

(14) All gallons of motor fuel sold for use or consumed in railroad diesel locomotives;

(15) All gallons of motor fuel purchased in quantities of 25 gallons or more for use as a motor fuel for internal combustion engines not operated upon highways of this state;

(16) All gallons of motor fuel purchased in quantities of 25 gallons or more and used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor, the person claiming the refund may present to the Tax Commissioner a statement of his or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement mixer truck, ~~or~~ garbage truck, or fuel delivery truck equal to 25 percent of the tax levied by this article paid on all motor fuel used in such a truck;

(17) Motor fuel used by a person regularly operating a vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of 25 gallons or more: *Provided*, That the amount refunded is equal to six cents per gallon: *Provided, however*, That the gallons of motor fuel have been consumed in the operation of urban and suburban bus lines and the majority of passengers use the bus for

traveling a distance not exceeding 40 miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools; and

(18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through (6), inclusive, of this subsection and that are purchased and used by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located.

(d) *Refundable exemptions from variable rate component of tax.* — Any of the following persons may claim an exemption from the variable rate component of the tax levied by section five of this article on the purchase and use of motor fuel by first paying the tax levied by this article and then applying to the Tax Commissioner for a refund.

(1) The United States or agency thereof: *Provided*, That if the United States government, or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on any purchase of motor fuel, the person selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may claim a refund of the variable rate of tax imposed by section five of this article on those sales.

(2) This state and its institutions;

(3) A county government or unit or agency thereof;

(4) A municipal government or agency thereof;

(5) A county board of education;

(6) An urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(7) A municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to a person who is required to maintain an inventory of motor fuel for the purpose of the program: *Provided*, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in

charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption;

(8) A bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county where the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located;

(9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: *Provided*, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle; or

(10) Beginning on January 1, 2018, all gallons of motor fuel sold for use or consumed in railroad diesel locomotives: *Provided*, That the refundable exemption contained in this subdivision may not exceed an aggregate amount of \$4,300,000 in any year to all taxpayers claiming the exemption and that if more than an aggregate amount of \$4,300,000 is appropriately claimed in any year, then the refundable exemption shall be distributed proportionately to the taxpayers so that the total aggregate refund is \$4,300,000 in that year. The Tax Commissioner may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code that the Tax Commissioner considers necessary to administer the exemption contained in this subdivision.

(e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor does not apply to sales of motor fuel under this article.

**§11-14C-30. Refund of taxes erroneously collected, etc.; refund for gallonage exported or lost through casualty or evaporation; change of rate; petition for refund.**

(a) The commissioner is hereby authorized to refund from the funds collected under the provisions of this article any tax, interest, additions to tax or penalties which have been erroneously collected from any person.

4 (b) Any supplier, distributor, producer, retail dealer, exporter or importer, while the owner  
5 of motor fuel in this state, that loses any invoiced gallons of motor fuel through fire, lightning,  
6 breakage, flood or other casualty, which gallons having been previously included in the tax by or  
7 for that person, may claim a refund of a sum equal to the amount of ~~the flat rate of the tax~~ any  
8 and all taxes levied by section five of this article paid upon the invoiced gallons lost.

9 (c) Any dealer as defined in §47-11C-2 of this code, and any bulk plant in this state that  
10 purchases or receives motor fuel in this state upon which the tax levied by section five of this  
11 article has been paid, is entitled to an annual refund of ~~the flat rate of the tax~~ any and all taxes  
12 levied by section five of this article for invoiced gallons lost through evaporation: *Provided*, That  
13 only the owner of the bulk plant that is also the owner of the fuel in the bulk plant may claim this  
14 refund for invoiced gallons lost through evaporation. The refund is computed at the ~~flat~~ rate of tax  
15 levied per gallon under this article on all invoiced gallons of motor fuel actually lost due to  
16 evaporation, not exceeding one percent of the adjusted total accountable gallons, computed as  
17 determined by the Commissioner.

18 (d) Every supplier, distributor or producer, retail dealer, exporter or importer is entitled to  
19 a refund of the ~~flat~~ rate of the tax levied by section five of this article from this state of the amount  
20 resulting from a change of rate decreasing the tax under the provisions of this article on motor  
21 fuel on hand and in inventory on the effective date of the rate change, which motor fuel has been  
22 included in any previous computation by which the tax levied by this article has been paid.

NOTE: The purpose of this bill is to provide exemption for fuel used in power take off unit  
of a fuel delivery truck and allow refunds of all motor fuel taxes if fuel lost through casualty.

Strike-throughs indicate language that would be stricken from a heading or the present law  
and underscoring indicates new language that would be added.